



SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-94490; File No. SR-NYSEArca-2022-13]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change to Amend Rule 7.31-E(h)(3)

March 22, 2022.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on March 9, 2022, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 7.31-E(h)(3) with respect to Discretionary Pegged Orders. The proposed change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

1. Purpose

The Exchange proposes to amend Rule 7.31-E(h)(3) to modify certain factors relevant to the quote instability calculation for Discretionary Pegged Orders. Specifically, the Exchange proposes to amend Rule 7.31-E(h)(3)(D)(i)(D)(1)(a), which sets forth the quote stability coefficients. Under Rule 7.31-E(h)(3)(D)(i)(D)(3), the Exchange may modify the quote stability coefficients at any time, subject to a filing of a proposed rule change. The Exchange proposes such changes in this rule filing.

Discretionary Pegged Orders

Rule 7.31-E(h)(3) provides for Discretionary Pegged Orders, which are Pegged Orders⁴ that may exercise price discretion from their working price to a discretionary price in order to trade with contra-side orders on the NYSE Arca Book, except during periods of quote instability as defined in Rule 7.31-E(h)(3)(D).

Rule 7.31-E(h)(3)(D) provides that the Exchange uses a quote instability calculation to assess a security's "quote instability factor," or the probability of an imminent change to the current PBB to a lower price or PBO to a higher price.⁵ When quoting activity in a security meets predefined criteria and the quote instability factor calculated is greater than the Exchange's defined "quote instability threshold," the Exchange treats the quote as unstable ("quote instability" or a "crumbling quote").

Rule 7.31-E(h)(3)(D)(i) provides that the Exchange determines a quote to be unstable when, among other factors, the quote instability factor result from the quote stability calculation is greater than the quote instability threshold. To perform the quote stability calculation and

⁴ A Pegged Order is a Limit Order that does not route with a working price that is pegged to a dynamic reference price. If the designated reference price is higher (lower) than the limit price of a Pegged Order to buy (sell), the working price will be the limit price of the order. See Rule 7.31-E(h).

⁵ NYSE Arca Rule 1.1 defines PBB as the highest Protected Bid and PBO as the lowest Protected Offer. Rule 1.1 also provides that "PBBO" means the Best Protected Bid and the Best Protected Offer.

determine the quote instability factor, the Exchange employs a fixed formula utilizing the quote stability coefficients and quote stability variables set forth in Rule 7.31-E(h)(3)(D)(i)(D)(1)(a) and Rule 7.31-E(h)(3)(D)(i)(D)(1)(b), respectively.

Proposed Rule Change

The Exchange proposes to update the quote stability coefficients used in the quote instability calculation, which have not been modified since Rule 7.31-E(h)(3) was adopted.⁶ The proposed changes are intended to update the quote stability coefficients so that they are based on current market data and better calibrated to function on an exchange without an intentional delay mechanism and with deeper liquidity than other exchanges that offer similar functionality.⁷

The Exchange reviewed NYSE Arca market data from randomly selected days in the fourth quarter of 2021 to analyze the effectiveness of the quote stability coefficients in predicting changes to the PBBO. Specifically, the Exchange reviewed PBBO data, on a nanosecond level, for certain intervals throughout each randomly selected day to track changes to quotes on NYSE Arca and away markets. The Exchange used this data to generate and test the proposed quote stability coefficients, and based on its analysis, believes that modifying the quote stability coefficients would enable the Exchange to evaluate the quality of the PBBO more effectively.

⁶ The Exchange adopted Rule 7.31-E(h)(3) governing Discretionary Pegged Orders in 2016 but has not yet announced the implementation of the order type. See Securities Exchange Act Release No. 78181 (June 28, 2016), 81 FR 43297 (July 1, 2016) (SR-NYSEArca-2016-44) (Notice of Filing of Amendment No. 1, and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Add a New Discretionary Pegged Order). Accordingly, the current quote stability coefficients have not been in operation on the Exchange.

⁷ The Exchange notes that its rules governing the Discretionary Pegged Order, including the formula for the quote instability calculation, are based on the Investors Exchange LLC (“IEX”) Discretionary Peg Order (“D-Peg Order”), which functions in conjunction with IEX’s speed bump. See id. The Exchange does not anticipate any issues in connection with the introduction of the order type, including because such orders would be processed similarly to Discretionary Pegged Orders on its affiliated exchange, NYSE American LLC (“NYSE American”). NYSE American, which also does not currently function with any intentional delay, offers a Discretionary Pegged Order as set forth in NYSE American Rule 7.31E(h)(3), which is substantially the same as NYSE Arca Rule 7.31-E(h)(3).

The Exchange proposes to modify the quote stability coefficients set forth in Rule 7.31-E(h)(3)(D)(i)(D)(1)(a)(i) through (v) as follows:

Quote Stability Coefficient	Current Value	Proposed Value
C0	-2.39515	-1.793885
C1	-0.76504	-0.600796
C2	0.07599	0.0776515
C3	0.38374	0.492649
C4	0.14466	0.1631485

The Exchange believes that its proposed modification of the quote stability coefficients, based on the market data analysis described above, would improve the accuracy of the fixed formula used to perform the quote instability calculation. Specifically, the Exchange believes that the proposed quote stability coefficients, which have been adjusted to reflect more recent activity on the Exchange, would improve the calibration of the quote instability calculation to activity on the Exchange, thereby improving the Exchange's ability to predict whether there is quote instability and protect Discretionary Pegged Orders from exercising discretion when the PBBO is unstable.

Because of the technology changes associated with this proposed rule change, the Exchange will announce the implementation date by Trader Update.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Section 6(b)(5),⁹ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed change would promote just and equitable

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and protect investors and the public interest because it is designed to increase the effectiveness of the quote instability calculation used to determine whether a crumbling quote exists. As discussed above, the proposed change is based on the Exchange's analysis of market data, which supports that the proposed change would improve the accuracy of the Exchange's quote instability calculation. Accordingly, the Exchange believes that the proposed change would remove impediments to, and perfect the mechanism of, a free and open market and a national market system, as well as protect investors and the public interest, by enhancing the Exchange's protection of Discretionary Pegged Orders. Specifically, because the proposed quote stability coefficients were derived through an analysis of more recent market data and are calibrated to reflect current activity on the Exchange (including to adapt them to function on an exchange without an intentional delay mechanism and with deeper liquidity than other exchanges that offer similar functionality), the Exchange believes that the proposed change would improve the effectiveness of the quote instability calculation in predicting periods of quote instability and thus enhance the extent to which Discretionary Pegged Orders would be protected from unfavorable executions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed change would promote competition by improving the accuracy of the quote instability calculation, thereby enhancing the protection of Discretionary Pegged Orders from unfavorable executions during periods of quote instability.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or such

longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2022-13 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2022-13. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F

Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change.

Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2022-13 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

J. Matthew DeLesDernier,
Assistant Secretary.

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¹⁰ 17 CFR 200.30-3(a)(12).